

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 91-018-15-1-4-01044-16
Petitioner: WEO, LLC
Respondent: White County Assessor
Parcel: 91-76-25-000-025.700-018
Assessment Year: 2015

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated its 2015 assessment appeal with the White County Assessor on September 18, 2015.
2. On April 28, 2016, the White County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on December 2, 2016.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on January 5, 2017. She did not inspect the property.
6. Walter E. Owens appeared *pro se*. Scott Potts appeared for the Respondent. Both of them were sworn and testified.

Facts

7. The property under appeal is a single family residence located at 406 South 3rd Street in Wolcott.
8. The PTABOA determined a total assessment of \$13,700 (land \$8,000 and improvements \$5,700).
9. The Petitioner requested a total assessment of \$3,500 (land \$3,400 and improvements \$100).

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:
 - Petitioner Exhibit 1: Property record card for 200 West South Street,
 - Petitioner Exhibit 2: Property record card for 204 West Anderson Street,
 - Petitioner Exhibit 3: Subject property record card,
 - Petitioner Exhibit 4: Text of 50 IAC 2.4-1-1,
 - Petitioner Exhibit 5: Article from the Department of Local Government Finance (DLGF) website entitled “[W]hat is ‘trending’?”

The Respondent did not submit any exhibits.

- Board Exhibit A: Form 131 with attachments,
 - Board Exhibit B: Hearing notice dated December 2, 2016,
 - Board Exhibit C: Hearing sign-in sheet,
 - Board Exhibit D: Notice of Appearance and Application for Certification as a Professional Appraiser with the DLGF for Scott Potts.
- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:

- a) The property’s assessment is too high. The property should be considered “vacant” because no one has lived in the home since 1995. The condition of the home is so poor that “it wouldn’t pass for a dog house.” It is located at the end of a dead-end gravel street in an undesirable neighborhood. *Owens argument.*
- b) Until the home is made “livable” the property has “no value.” The cost to achieve this would be “well over \$50,000.” *Owens argument.*
- c) On September 4, 2014, the Petitioner purchased the property for \$3,500. While the property was “never officially listed for sale,” the previous owner approached Mr. Owens several times about purchasing the property. Originally, the previous owner was asking \$15,000 for the property, but the price dropped to \$6,500 several years later. In 2014, the Petitioner offered \$2,000 for the property and after negotiations they agreed to \$3,500. According to Mr. Owens because the transaction involved “a

- willing buyer and a willing seller,” the property should be assessed at \$3,500. *Owens testimony, Pet’r Ex. 3.*
- d) A property’s purchase price establishes its true tax value. One way to determine if an assessment is accurate is “to ask if the property could have sold for the amount for which it is assessed.” Because the Respondent has assessed this property in excess of the Petitioner’s purchase price “for several years, the Respondent should have the burden of proving the value.” *Owens argument; Pet’r Ex. 4, 5*
 - e) The Petitioner also presented sales of two other properties located in Wolcott. The first property, located at 200 West South Street, sold for \$4,500 on July 14, 2014. This property is currently assessed at \$7,000. *Owens testimony; Pet’r Ex. 1.*
 - f) The second property, located at 204 West Anderson Street, sold for \$3,210 on September 24, 2014. The property also previously sold in 2013 for \$5,000. The current assessment for this property is \$10,000. *Owens testimony; Pet’r Ex. 2.*

12. Summary of the Respondent’s case:

- a) The property is correctly assessed. The Petitioner failed to meet its burden of proving the property’s market value-in-use. *Potts argument.*
- b) The property’s value has trended downward since 2010. In 2010 the assessed value was \$24,200. By 2015 the assessed value trended down to \$13,700. Trending is done “in mass.” Individual properties are not reassessed unless it is a reassessment year or the owner files an appeal. *Potts testimony.*
- c) Finding comparable sales for an “unlivable” home is difficult. Most homes that sell are “livable.” The subject property is “extraordinary and different from the typical market.” *Potts argument.*
- d) Finally, the Petitioner’s evidence is flawed. The property located at 200 West Street is a vacant lot. The subject property includes a home. The property located at 204 West Anderson Street was purchased by Ag Green Trees, LLC, a company that “tends” to purchase foreclosures. Additionally, the subject property is “50% larger” than this property. *Potts argument (referencing Pet’r Ex. 1, 2).*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

14. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agreed that the assessed value of the subject property decreased from \$14,700 in 2014 to \$13,700 in 2015. Nonetheless, the Petitioner argued that because the property had been overvalued for “twenty years,” the burden should be on the Respondent “to prove what the value is.” The Petitioner failed to point to any rule, statute, or case law to support that argument and the Board is not aware of any. The burden shifting provisions of Ind. Code § 6-1.1-15-17.2 are clear, and here, they do not apply because the assessment decreased from 2014 to 2015. For these reasons, the burden remains with the Petitioner.

Analysis

17. The Petitioner failed to make a prima facie case for reducing the 2015 assessment.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind.

Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).

- c) Nobody disputed that the subject property has a house that is in bad or unlivable condition; however, the record contains no evidence about what specific problems the house might have. Mr. Owens testified that it would cost “well over \$50,000” to make the home livable again, but he did not offer any estimates for repairs or any market-based evidence to quantify the effect of its condition on its value. Therefore, while serious condition problems almost certainly have a negative impact on the value of a house, in this case that point does not prove what a more accurate valuation might be.
- d) Mr. Owens purchased the property for \$3,500 on September 4, 2014. This sale is sufficiently close to the assessment date to potentially be probative evidence for a 2015 assessment. And the purchase price of a property is often the best indication of its value. *See Huber Realty, Inc. v. Hendricks Co. Ass’r*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board’s determination that the weight of the evidence supported the property’s purchase price over its appraised value).
- e) However, any sale must satisfy certain requirements in order to be credible, reliable evidence of valuation. According to the Manual, market value is:

[T]he most probable price, as of a specified date, in cash, or terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell *after reasonable exposure in a competitive market* under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming neither is under undue duress.

MANUAL at 5-6 (emphasis added.)

- f) Evidence in this case indicates that at least one key indicator of a market value sale was missing. The record contains no evidence of reasonable market exposure. According to Mr. Owens the subject property was “never officially listed for sale.” Mr. Owens testified that the seller inherited the property and then had no use for it. The seller and Mr. Owens negotiated the price over a period of several years, but the record contains no evidence about how those negotiations first got started or how Mr. Owens found out it was for sale. Mr. Owens testified that he tried to purchase this property 15 years ago and at that point the seller wanted \$15,000. At that point Mr. Owens told the seller he was crazy. Six or eight years later the seller proposed \$6,500, but Mr. Owens again told him that price was too high. About July 2014 the seller again approached Mr. Owens about the property and Mr. Owens offered \$2,000 for it. They “horsed around” for about a month and the seller said he had someone else who was interested. In response, Mr. Owens said to go ahead and sell it. About two weeks later the seller called and said the other buyer backed out. At that point the seller and Mr. Owens finally agreed on \$3,500. We have no reason to doubt the

testimony about how Mr. Owens came to buy the subject property, but those circumstances do not preclude the possibility that with reasonable marketing efforts, the property could have sold for more.¹ For this reason, the Petitioner's purchase price does not convince us what a more accurate valuation might be.

- g) Mr. Owens also offered other market-based evidence. He presented sales of two other properties in Wolcott. In offering this evidence, he is relying on the sales-comparison approach to establish the market value-in-use of the property. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales comparison approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property’s total value.”); *see also, Long*, 821 N.E.2d 466, 469.
- h) To effectively use the sales-comparison approach as evidence in a property tax appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their market values-in-use. *Id.*
- i) Here, the type of analysis required and the related adjustments are lacking from the Petitioner's evidence. Granted, the Petitioner offered limited descriptions of the two purportedly comparable properties, but he failed to make any adjustments to account for any differences between the properties. Further, his evidence failed to yield an indicated value. Thus, the Petitioner's sales-comparison analysis lacks probative value.
- j) Consequently, the Petitioner failed to make a prima facie case that the 2015 assessment is incorrect. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Board finds for the Respondent.

¹ There are, of course, various ways to market a property for sale that might be considered “reasonable.” But here we do not know what, if anything, the seller did. Therefore, we make no determination about what reasonable marketing efforts would have been for the subject property.

Final Determination

In accordance with these findings and conclusions, the 2015 assessment will not be changed.

ISSUED: April 5, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.